SECTION I. FINDINGS OF FACT

1. The Doe Run Resources Corporation (Doe Run) is a New York corporation, with one of its primary facilities located at 881 Main Street, Herculaneum, Jefferson County, Missouri 63048 .
2. The Doe Run Company is a fictitious name filed with the Missouri Secretary of State, the owner of which is The Doe Run Resources Corporation.
3. Doe Run operates a primary lead smelter (Doe Run smelter) at 881 Main Street in Herculaneum.
4. As part of its operations, Doe Run smelter receives lead concentrate from mining and milling operations located in the Missouri counties of Iron, Reynolds and Washington. Doe Run smelter also receives hazardous materials from offsite third parties for use and reuse at the Doe Run smelter.
5. For the last two or three years, the primary mode of transporting lead concentrate to Doe Run's smelter has been by trucks.
6. Trucks enter and exit the City of Herculaneum on their way to and from Doe Run's smelter through public streets.
7. On August 21, 2001, MDNR personnel responded to citizens' complaints related to dust on the streets of Herculaneum.
8. MDNR personnel collected a sample of road dust at the northwest corner of Broad Street and Station Street in Herculaneum on August 21, 2001. MDNR personnel observed that road dust had collected in long narrow piles along the street curbs and shoulders. The sample of road dust was dark grey and metallic in appearance.
9. The sample (# 0139276) was collected and transferred under chain-of-custody to MDNR's Environmental Services Program laboratory for analysis. Sample #0139276 was analyzed for total arsenic, total cadmium, total nickel, total lead, and total zinc. The laboratory analyses revealed 300,000 milligrams per kilogram of lead, 24,800 milligrams per kilogram of zinc, 598 milligrams per kilogram of cadmium, 519 milligrams per kilogram of nickel, and 138 milligrams per kilogram of arsenic. **Copies of the sample result analyses are included**

as Exhibit 1 and are incorporated herein by this reference.

10. The U.S. Environmental Protection Agency (EPA), with assistance from MDNR, performed additional screening of roadways, nearby road shoulders, and adjacent properties on August 30, 2001 using an x-ray fluorescence meter. Sampling revealed concentrations of lead ranging from approximately 300,000 to 30,000 milligrams per kilogram located primarily along hauling routes and approximately 50 yards down intersecting side streets. **A copy of the EPA report is attached hereto as Exhibit 2 and is incorporated herein by this reference**.

11. Ambient air quality data from Herculaneum monitors for the calendar quarter ending June 30, 2001 indicates increasing ambient concentrations of lead at several monitors, compared with data from earlier quarters. **A copy of the quality assured ambient lead data for the quarter ending June 30, 2001 is attached hereto as Exhibit 3 and is incorporated herein by this reference.**

12. On September 17, 2001, MDNR staff observed fugitive dust from a highly contaminated area (i.e., an un-fenced area along the south side of the plant between the truck scales and the Mississippi River) blowing onto city property. MDNR staff issued a Notice of Violation (NOV) #6313 on September 20, 2001 to Doe Run for the violation related to this observation. **A copy of the NOV is attached as Exhibit 4.**

13. Through discussions with representatives of Doe Run, observations, and review of the field screening and laboratory analyses results noted in items eight (8) through twelve (12) above, MDNR and EPA staff concluded that the extremely high level of lead contamination can be attributed to lead concentrate spilled from full and/or mostly empty trucks hauling lead concentrate that entered and/or exited the Doe Run smelter along primary and secondary hauling routes. Due to conditions at the facility, any and all vehicles exiting the facility may be transporting lead-contaminated materials from the site. The primary hauling routes in Herculaneum from the facility west to U.S. Highway 61/67 include Station Street, Brown Street, and Joachim Avenue. The secondary hauling

routes from the facility north and west to U.S. Highway 61/67 include Main Street and Joachim Avenue. MDNR's sample was collected along the main haul route.

14. On or about August 31, 2001, EPA notified Doe Run to immediately undertake actions to clean the hauling routes and facilities that may contribute to dispersal of hazardous substances (e.g. extremely elevated concentrations of lead), throughout the streets of Herculaneum. **A copy of EPA's letter to Doe Run is included as Exhibit 5 and is incorporated herein by this reference.**
15. The fugitive dust from the Doe Run smelter found in the streets of Herculaneum is a water contaminant as that term is defined in Section 644.016(22), RSMo.
16. Joaquim Creek and the Mississippi River are waters of the state as that term is defined in Section 644.016(25), RSMo.
17. On or about September 1, 2001, Doe Run undertook certain activities in response to EPA's request of August 31, 2001.
18. On or about September 17, 2001, EPA and the MDNR notified Doe Run that they were invoking Section XXV of the Administrative Order on Consent for Doe Run's lead smelter in Herculaneum, Missouri, docket number RCRA-7-2000-0018, CERCLA7-2000-0029. The letter requires expedited assessment of residential yards, play areas and high-child use areas in Herculaneum as well as remediation of residential yards where children with elevated blood lead levels reside. **A copy of EPA's letter to Doe Run is included as Exhibit 6 and is incorporated herein by this reference.**
19. On or about September 24, 2001, MDNR received a letter from the Missouri Department of Health concluding that "risks to the public's health, especially pregnant women and children through age six, are clear and present and are an imminent and substantial endangerment" as a result of concentrations of lead along hauling routes, intersecting streets, and adjacent properties. **A copy of the letter from the Missouri Department of Health is included as Exhibit 7 and is incorporated herein by reference.**
20. Sample results were received from the EPA on September 20, 2001 indicating that material collected on September 5, 2001 from four out of five sample

locations exceeded the statutory definition of hazardous waste based on the characteristic of toxicity for lead. **A copy of the results and location map is included as Exhibit 8 and is incorporated herein by reference.**